centage of the value of the property, and consequently the premium rate should be expressed as a proportion of the value of the property. (This is in no sense to be regarded as an advocacy of a "valued policy.") Short insurance will increase the percentage of "incurred loss" to "premiums earned" (the usual test as to whether the business "pays" or is self-sustaining), even when the actual fire waste is decreasing. Although Mr. Moore says confidently "there is no reason why a rate cannot be graded according to the amount of insurance carried," there are two reasons why that has never been done in the past, save to a limited extent in the case of fireproof buildings when rated by schedule. In the first place, an accurate valuation of the property is expensive and often prohibitively so; and it is often necessary to place a policy on goods the identity of which may actually change and the value of which is expected to change as time goes on. This difficulty can, however be overcome in certain classes, and especially in those classes where short insurance is the practice; in other cases it does not apply. In the second place the mathematical problem involved is a very intricate one. Mr. Moore and his associates on the Universal Schedule Committee adopted a table for the graduation of the rates in the case of fireproof buildings when co-insurance is arranged, but it is compiled by some rule-of-thumb method and is in no sense properly proportioned.

The great gain which will come to fire underwriting from the recent development of co-insurance will arise from the establishment of a definite relationship between the value of the property and the premium charged. This, in the opinion of the writer of this review, is the foundation of scientific rate-making. With this and the method of analysis furnished by schedule rating "all things are possible."

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*Legal Tender:* A Study in English and American Monetary History. By SOPHONISBA PRESTON BRECKINRIDGE ("The Decennial Publications," Second Series, Vol. VII). Chicago: The University of Chicago Press 1903. 8vo, pp. xviii + 181.

IT is a pleasure to review a piece of work so well done as is this history of legal tender by Miss Breckinridge. In it the exercise of the power to determine what shall be a legal tender for debts or

purchases is traced from the Conquest—when it existed as a branch of the royal prerogative in the crown's power over the coinage—through English and American experience to the decision in Julliard *vs.* Greenman in 1884 (not in 1883, as stated at p. 133), which finally settled for this country the validity of our legal-tender acts.

The power of the crown to coin money and enforce its circulation by penalties was unquestioned until Parliament in the fourteenth and fifteenth centuries made a few feeble efforts to exercise at least a confirmatory power over the sovereign's prerogative; but even these were abandoned under the Tudors. About 1600 the doctrine became settled in the courts that all lawful money issued by the crown, despite its debasement, was a legal tender for prior debts. Debasements of the coinage were frequent until the time of Elizabeth, after which they ceased altogether in England; and in 1695 William III left to Parliament the entire subject of regulating the coinage, since which time the matter has never been regarded as outside that body's ordinary legislative power.

One of the author's most interesting conclusions from her investigation of early English practice is that the frequent debasement of the coin was rarely intended for the profit of the crown, but was due to misdirected, though honestly conceived, efforts to secure a stable circulating medium in the face of great difficulties—a view widely at variance with certain general statements that have had much currency among economic writers. In most of these efforts Parliament acquiesced, and in several took the initiative. (See pp. 27–48, *passim.*)

The greater part of the book is devoted to the history of legal tender in America, and especially of all kinds of paper money, whether made a legal tender between individuals, or only in payments to the government. Careful and separate accounts are given of the paper issues of the colonies before the Revolution, of the states before the adoption of the constitution, of the federal government, and finally of the states and state banks since 1789. In approaching the vexed question of the constitutionality and wisdom of the national legal-tender acts, Miss Breckinridge has treated her material with marked freedom from bias. She neither draws unwarranted inferences from the proceedings in the Philadelphia convention of 1787, nor does she censure the men who passed the acts of 1862, honestly believing them necessary, though she shares the general opinion of economists that they were really unjustifiable. She admits that the question of the constitutionality of these acts depends in part upon large considera-

tions of public policy, though she criticises the decision that paper can be made a legal tender for prior debts (a gross debasement of the currency) with the comment that "for an analogus act on the part of the English government, from which American ideas of sovereign power are drawn, we should have to go back to the reign of Henry VIII" (p. 136). It seems right to observe, however, that this comment ignores the fact that between 1776 and 1787 seven of the American states issued paper money that was legal tender for prior debts, although at the time the constitutions of at least four of them (New York, Pennsylvania, North Carolina, and South Carolina) contained the usual prohibitions against deprivation of property. All of the New England colonies and Pennsylvania had done the same before the Revolution. Our early American constitutions, including the federal constitution, were adopted quite as much with reference to American as to English political experience, and, while colonial and early state practice in this regard is not necessarily conclusive, it is certainly very important evidence in determining the meaning of a constitution that is to be historically interpreted. (Compare the use made of similar evidence in the income-tax cases, 157 U. S. 429 and 158 U. S. 601 [1895].)

At pp. 92 and 93 the author answers the argument for the constitutionality of the acts, based upon the prior slight debasement of our gold coins in 1834 to make them equal in value to silver, by showing that, as the ordinary debtor at this time had the option to pay in silver, there was no real impairment of his contract. It should be noticed, however, that this answer could not be made if the contract were to pay in gold coin. (Bronson *vs.* Rodes, 7 Wall, 229 [1869].)

To the author's discussion of state-bank notes and the interpretation of the constitutional prohibition upon the states issuing bills of credit should be added the recent case of Houston and Texas Central Railroad Co. *vs.* Texas, 177 U. S. 66 [1900], in which were considered certain warrants of the state of Texas issued in denominations of $1 and upward, in the size, shape, and color of bank notes, payable to bearer, and by statute made "receivable as money" in payment of all taxes and debts due the state. An added currency was given by granting certain privileges to railroads in the state that would accept them at par for passengers and freight. These warrants were issued, however, only to pay actual debts of the state, and though county officers who had received them were directed to disburse them "as money" at par, they were not to be reissued after coming back to the

hands of the state treasurer. They were redeemable whenever the state had money to pay them, and of course were not legal tender save in payments to the state. These obligations were held not to be unconstitutional "bills of credit," and the court expressed great reluctance to interfere in any way with the power of the states to use their paper credit for genuine borrowing or debt paying purposes. See especially 177 U. S. at 88–90.

In the appendices to the book reference is made to legislation in several states (Kansas, South Dakota, and Nevada) invalidating so-called "gold contracts" between private persons (p. 160). It deserves notice that in 1896 Mr. Justice Field declared, in a *dictum* apparently concurred in by Messrs. Justices Peckham, Brewer, and White, that such laws violated the federal constitution. (See Woodruff *vs.* Mississippi, 162 U. S. 291, 306–9.)

The most interesting matter in the appendices, however, is the reprint of a paper prepared by Mr. Justice Miller and his four associates who composed the majority that overruled Hepburn *vs.* Griswold (the first legal-tender case). This contains an account of what took place in the conference-room of the judges when Hepburn *vs.* Griswold was decided, and was prepared as an answer to a memorandum intended for the court files by Mr. Chief Justice Chase in which he criticised the action of the subsequent majority in granting a rehearing of the question. This memorandum was withdrawn by its author, and the answer was left under seal by Mr. Justice Bradley to be published after the death of all the judges then constituting the court. It has lately been made public by Mr. Justice Bradley's son. Briefly, it states that Mr. Justice Grier was at the time so feeble-minded from age and infirmity that he did not understand the question, and at first persisted in voting for the constitutionality of the law, leaving the court a tie. Later he was reminded that in conversation he had expressed different views, and finally changed his vote. One week later every judge on the bench concurred in telling Mr. Justice Grier that he ought to resign, and he did so. There were at this time two vacancies on the bench about to be filled, but despite this, and despite the evident worthlessness of the concurrence of one of the majority, the decision in Hepburn *vs.* Griswold was made public without further delay.

Mr. Justice Miller and his associates thought that these facts justified their course in granting a rehearing of the question after the bench was again full, especially as neither the public nor the

profession had accepted the first decision as final. Certainly the action of the majority in Hepburn *vs.* Griswold was in striking contrast to that of the court under Marshall, when the important constitutional cases of Charles River Bridge *vs.* Warren Bridge, New York *vs.* Miln, and Briscoe *vs.* Bank of Kentucky were permitted successive rearguments after vacancies occurred on the bench until, it is said, a hostile majority was reduced to a minority by the votes of newly appointed judges. (See New York *vs.* Miln, 8 Peters, at 122 [1834].) Future critics must in fairness give much consideration to this disclosure in rating the judicial conduct of the judges who overruled Hepburn *vs.* Griswold.

Miss Breckinridge's book will occupy a place not filled by any other single work. It makes clear some points concerning the origin of legal-tender money and early English practice in regard to it that have not been generally understood. It brings together in orderly arrangement material heretofore scattered in many places; and it contains the best concise and accurate account of American legal-tender paper money, from the purely legal standpoint, now in print.

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*Money and Credit.* By WILBUR ALDRICH. Revised Edition. New York and London: The Grafton Press, 1903. 16mo, pp. viii+187.

THIS is a condensed but fairly complete exposition of monetary principles. The author says in his preface that he began ten years ago "studies to substantiate a pet theory," but that "after a time the original theory which started the investigations disappeared and there was developed a view of the subject as new to the author as it will be to any of his readers." The new view seems to be that the projects now under consideration in this country for giving elasticity to the note issues of banks is merely a new form of the "soft money delusion." He would have the notes of banks secured by a gold reserve nearly equal to the notes.

Although Mr. Aldrich has evidently read widely on banking, yet he has failed to understand some of the simple elements of the subject, such as "capital," "reserve," and "assets." The perplexity which his use of these terms will cause the reader may be illustrated by a single sentence: "A bank does not need assets, except for its reserve, and